

STATEMENT OF THE FACTS

In September 2004, the Minneapolis City Council enacted Minneapolis Code of Ordinances Sections 474.620 to 474.670 to establish a new violation governing the automatic enforcement of traffic signals.

In July 2005, the City of Minneapolis began enforcing Minneapolis Code of Ordinances Section 474.640 at twelve intersections throughout Minneapolis by using a camera to capture the violation. Citations were issued to persons caught violating Minneapolis Code of Ordinances Section 474.640. The citations carried a total fine of \$142 (\$67 fine + \$72 court surcharge + \$3 law library fee). Citations were mailed to each defendant. With each citation, the defendant received an instruction page, which informed the defendant why he or she had received the citation and laid out two options for resolving the citation. The first option listed was for defendants who were not the actual driver. This option specifically instructed the defendant to fill out the "identify new driver" coupon and mail it back to the Minneapolis Police Department. The second option was for defendants who wanted to plead guilty to the offense and gave them instructions on the various ways to pay their fine. Finally, the instruction page informed defendants that if they wanted to plead not guilty and contest the citation, they must appear in person before an Administrative Hearing Officer.

On August 16, 2005, Daniel Alan Kuhlman was charged with violating Minneapolis Code of Ordinances Section 474.640. On October 26, 2005, Kuhlman pled not guilty and a court trial was scheduled for December 21, 2005. On December 15, 2005, Kuhlman filed a motion to dismiss the charge on various constitutional grounds. On March 14, 2006, the Honorable Mark Wernick issued an order granting Kuhlman's

motion to dismiss on the ground that the City of Minneapolis lacked the authority to enact Minneapolis Code of Ordinances Sections 474.620 to 474.670. Judge Wernick did not address any of the constitutional issues raised by Kuhlman in his motion.

On March 20, 2006, the City of Minneapolis filed a notice of appeal with the Minnesota Court of Appeals. On September 22, 2006, in *State v. Kuhlman*, 722 N.W.2d 1 (Minn. Ct. App. 2006), the Court of Appeals affirmed the decision of the trial court, holding that the City of Minneapolis was preempted by state law from enacting Minneapolis Code of Ordinances Sections 474.620 to 474.670. The Court of Appeals did not address the due process arguments raised on appeal. On October 18, 2006, the City of Minneapolis petitioned the Minnesota Supreme Court for review and the City's petition for review was granted on December 12, 2006. Oral arguments were held before the Minnesota Supreme Court, and on April 5, 2007, the Supreme Court affirmed both the lower court's and Appellate Court's decision holding that the City of Minneapolis did not have authority to enact and enforce these ordinances.

Several defendants who were charged with violating Minneapolis Code of Ordinances Section 474.640 have filed motions to reopen their resolved citations in Hennepin County District Court. These motions can be divided into two categories – persons who pled guilty to the offense and persons who received a diversion by entering into an agreement to suspend prosecution.

As of July 13, 2007, ninety-four (94) defendants who pled guilty to the charge have filed motions to reopen their paid citations. The majority of these defendants paid the \$142 fine but others negotiated a lower fine with a hearing officer. Some defendants paid more costs due to the imposition of late fees, delinquency fees or collection fees

which were added to their fine due to their initial failure to respond to their citation. The reasons cited by the defendants for requesting the citations be reopened are as follows: (A) the cameras are illegal (30); (B) the defendant was not the driver (28); (C) there is a factual issue in the case (12); (D) the cameras are illegal and the defendant was not the driver (7); (E) the defendant wants an expungement (5); (F) several did not cite a specific reason (5); and (G) finally several cited various miscellaneous reasons (7).

As of July 13, 2007, fifty-three (53) defendants who entered into diversion agreements have filed motions to reopen their diverted citations. These defendants met with a hearing officer and signed agreements to suspend the prosecution of their citations. The majority of these defendants paid the \$142 as prosecution costs. A few defendants negotiated lower court costs and some paid higher court costs to cover the imposition of a late fee, delinquency fee or collection fee that were added due to the defendant's initial failure to respond to their citation. In all fifty-three cases, the citations have been dismissed per the signed agreements. The reasons cited by the defendants for requesting the citations be reopened are as follows: (A) the cameras are illegal and unconstitutional (30); (B) there is a factual issue in the case (6); (C) the ticket was given by a camera and not a police officer (3); (D) the defendant was not the driver (3); (E) no reason was listed (3); (F) the defendant was not the driver and the cameras are unconstitutional (1); and (G) various miscellaneous reasons were cited (8).

Both categories of motions are currently pending in the Hennepin County District Court before the Honorable Mark Wernick.

ARGUMENT

I. CLAIMANTS (DEFENDANTS) WHO HAVE FILED MOTIONS TO REOPEN THEIR PAID CITATIONS SHOULD BE ALLOWED TO DO SO UNDER THE SAME STANDARD AS THOSE CRIMINAL DEFENDANTS WHO SEEK TO WITHDRAW THEIR GUILTY PLEAS AFTER SENTENCING.

Although there is no precedent in Minnesota for allowing a person who has paid a citation to have the matter re-opened where the underlying violation was later found to be unconstitutional, there is a mechanism in place under the Minnesota Rules of Criminal Procedure whereby a defendant who has pled guilty may nevertheless withdraw his/her guilty plea under certain circumstances.

Once a guilty plea has been entered, a defendant does not have an absolute right to withdraw it. *See Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989).

However, the court must allow withdrawal of a guilty plea when the defendant's motion is timely and "withdrawal is necessary to correct a manifest injustice." Minn. R. Crim P. 15.05, Subd. 1. "A manifest justice occurs when a guilty plea is not accurate, voluntary, [or] intelligent." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). Whether withdrawal is necessary to correct a manifest injustice is left "to judicial decision." Minn. R. Crim. P. 15 cmt.

In a postconviction proceeding, the burden is on the petitioner/defendant to prove by a preponderance of the evidence that withdrawal of the guilty plea is warranted. Minn. Stat. § 590.04, subd. 3.

The fair and just requirement precludes a defendant from withdrawing a guilty plea "for any reason or without good reason." *Kim v. State*, 434 N.W.2d 263, 266 (Minn. 1989). In applying the fair and just standard, "the [district] court is to give due

consideration not just to the reasons advanced by the defendant but to any prejudice the granting of the motion would cause the prosecution by reason of actions taken in reliance upon the defendant's plea." *Id.* The defendant has the burden of proving that there is a fair and just reason to withdraw his plea. *State v. Kaiser*, 469 N.W.2d 316, 319 (Minn. 1991).

The Defendants who have pled guilty by paying their fines should be allowed to withdraw their 'pleas' under the fair and just standard, based on the unconstitutionality of the ordinance. Although, the ordinance was facially valid at the time the pleas were entered, the later finding of unconstitutionality means that Defendants have been convicted under an invalid, illegal ordinance. Such convictions clearly create a manifest injustice that continues so long as they are allowed to exist. The City has no legitimate interest in keeping defendants' convictions for an unconstitutional ordinance on record and should be precluded from profiting from those convictions in terms of fines paid.

Accordingly, defendants who have paid their fines and been convicted of violating the ordinance should be allowed to withdraw their pleas and have their fine payments refunded.

II. CLAIMANTS (DEFENDANTS) WHO HAVE FILED MOTIONS TO VOID THEIR DIVERSION CONTRACTS WITH THE CITY OF MINNEAPOLIS SHOULD BE ALLOWED TO DO SO UNDER A "VOIDABLE CONTRACT" THEORY.

The diversion agreements entered into by Defendants with the City of Minneapolis constitute a continuance for dismissal under Minn. R. Crim P. 27.05 and Minn. Stat. § 609.132. This is a contractual agreement between the prosecutor and the defendant that prosecution will be suspended (diverted) for a designated period of time on certain conditions, including that the defendant refrain from committing additional offenses and waive the right to a speedy trial. The court does not make a finding of guilt and the defendant does not make an admission of guilt. *See* Minn. R. Crim. P. 27.05, subd. 1(1) (providing that the parties may agree prosecution will be suspended"). At the end of the designated period, if the defendant has met the conditions, the matter is dismissed. *Id.* Subd. 7. A continuance for dismissal differs from a stay of adjudication and a stay of imposition in that it involves neither a guilty plea nor a finding of guilt.

Defendants entered into their contracts with the City of Minneapolis in the good faith belief that the Minneapolis Code of Ordinances Section 474.640 was constitutional. These agreements, while facially valid, binding, and enforceable at the time they were entered into, nevertheless contained a condition precedent (i.e. that the ordinance they were charged with violating was a valid, constitutional one) that must exist for the contract to remain enforceable. Once the ordinance that was the basis for the agreements was found to be unconstitutional, this condition precedent no longer existed and these agreements became akin to voidable contracts as the terms are no longer enforceable. *See The Lake Co. v. Molan*, 269 Minn. 490, 131 N.W.2d 734 (1964)

A voidable contract is described by 17 Am.Jur.2d Contracts, s. 7:

'A voidable contract * * * is valid and binding until it is avoided by the party entitled to avoid it. Furthermore, the defect therein may be cured by ratification by the party at whose instance it might be avoided.'

Restatement, Contracts s. 12 defines a voidable contract as one 'where one or more parties thereto have the power, by a manifestation of election to do so, to avoid the legal relations created by the contract.' Comment e states: 'Where both parties have a power of avoidance the propriety of calling the transaction a voidable contract rather than calling the transaction void, is due to the fact that action is necessary in order to prevent the contract from producing the ordinary legal consequences of a contract; and often this action in order to be effectual must be taken promptly. Moreover, ratification by either party may terminate his power of avoidance.'

Here, Defendants seek to rescind their contracts with the City of Minneapolis based upon the unenforceability of the terms of their agreements (i.e. they could not be convicted of violating an unconstitutional ordinance). The impossibility of satisfying the condition precedent (that the City has the ability to prevent the Defendants from being convicted of the ordinance) prevents the terms of an enforceable contract from existing.: When a contractual duty is subject to a condition precedent, whether that condition is express, implied, or constructive, there is no duty of immediate performance and there can be no breach of that contractual duty by mere nonperformance, unless the condition precedent is either performed or excused. If such a condition precedent is neither performed or excused within the time that is required, such failure now makes it impossible for a breach of contract to occur. Nonperformance of the primary contractual

duty can now never operate as a breach of it; and no remedy for enforcement will ever be available. Therefore the contractual duty must be regarded as discharged.

A. Corbin, 6 Corbin on Contracts § 1252 at 2 (West. 1962).

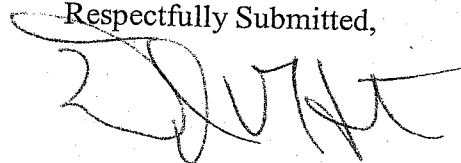
Since the Defendants did not (and cannot) waive the constitutionality of the ordinance they were charged with that operated as a condition precedent to the agreement under which they agreed, the City of Minneapolis failed to secure the execution of a valid, binding and enforceable contract which would have entitled it to performance of the contract terms. Accordingly, Defendants should be allowed to rescind their agreements with the City of Minneapolis and should be entitled to a full refund of all monies paid.

CONCLUSION

Based upon the preceding arguments and the facts of this case, it is the position of the MACDL that both categories of claimant/defendant be granted the respective relief sought..

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Respectfully Submitted,



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